

REMARKS

Claims 7 - 12 are pending in the application. The status of the application is as follows:

Claims	35 U.S.C. Sec.	References / Notes
7, 8, 10 and 12	§103(a) Obviousness	<ul style="list-style-type: none">• O'Rourke (U.S. Patent No. 6,078,728);• Flashinski (U.S. Patent No. 6,154,607); and• Kennedy (U.S. Patent No. 5,695,692).
9	§103(a) Obviousness	<ul style="list-style-type: none">• O'Rourke (U.S. Patent No. 6,078,728);• Flashinski (U.S. Patent No. 6,154,607);• Kennedy (U.S. Patent No. 5,695,692);• Schroeder (U.S. patent No. 4,725,712); and• Shibahashi (U.S. Patent No. 5,558,700).
11	§103(a) Obviousness	<ul style="list-style-type: none">• O'Rourke (U.S. Patent No. 6,078,728);• Flashinski (U.S. Patent No. 6,154,607);• Kennedy (U.S. Patent No. 5,695,692); and• Sprick (U.S. Patent No. 5,794,803); or• Fuchs (U.S. Patent No. 5,078,803).

5 Applicants thank the Examiner for his time and constructive comments during the telephone interview with the Applicants' representative. Although Applicants reassert their position with respect to presently pending claims 7-12 in the application, Applicants have added claims 13-17 for consideration by the Examiner

that include terminology and distinctions noted in the Office Action and during the telephone interview.

**35 U.S.C. §103(a), CLAIMS 7, 8, 10 AND 12 OBVIOUSNESS OVER O'ROURKE IN VIEW OF
FLASHINSKI AND KENNEDY**

- 5 1. *The combination of references fails to teach or suggest all of the elements required by claim 7.*

In the OA, on pp. 2-3, the Examiner indicated that O'Rourke discloses an evaporator having a base body with an integrated plug, a heating surface to provide heating to an active substance on a removable or slidable support, but without PTC heating resistance and a support with two housings adapted to two different types of containers of the active substances. Flashinski is cited to show that it is known in the art to provide an evaporator with a PTC heating element, and an active substance contained in a container that is a tablet and a tray having a volatile substance contained therein with a fragrance-permeable membrane. Kennedy is cited as disclose support or cases with sections to accommodate varying sizes of active substances.

Independent claim 7 of the present application is not taught or suggested by the combination of references for the following reasons.

- 20 2. *Flashinski fails to teach or suggest two housings adapted in size and shape to two different types of containers, where the containers are a tablet and a tray.*

Regarding Flashinski, the Examiner stated, on p. 2:

Flashinski further shows the active substance contained in a container that is a tablet and a tray having a volatile substance contained therein with a fragrance permeable membrane. [emphasis added]

5 Claim 7 requires that the support comprises two housings that are respectively adapted in size and shape to two different types of containers of active substances. In Flashinski, there is no disclosure of two housings to house both tablet and tray containers. Flashinski discloses a solid porous substrate 24 that contains a volatile (liquid) 26 contained within a cavity 22, formed in part by
10 unlabeled ref. char. 32 in Figure 4.

Flashinski does state, at 5/16-22 that the impregnation of the solid substrate 24 can be replaced with a liquid or gel sans the substrate, but in no case does it disclose the presence of two housings adapted for two different types of containers that are a tablet and a tray. To the extent that the Examiner is reading the solid
15 porous substrate 24 or even the impregnated 26 solid porous substrate on the "tray" of the present invention, then Flashinski fails to teach or suggest a tablet. To the extent that the Examiner is reading the solid porous substrate 24 or even the impregnated 26 solid porous substrate on the "tablet" of the present invention, then Flashinski fails to teach or suggest a "tray" (in this interpretation, if the Examiner is
20 interpreting Flashinski's element 32 as the "tray", then there are not two different types of containers of active substances, as required by claim 7).

Furthermore, the Examiner indicated that Flashinski further shows the active substance contained in a container. The Applicants agree that Flashinski only

shows a container, and therefore does not disclose the containers as being a tablet and a tray, which requires housings for two different types of containers.

In the event that the rejection is maintained, the Applicants respectfully request that the Examiner specifically point out which elements of Flashinski are being read on the containers that are a tablet and tray of the present invention, and how the housings are adapted in size and shape to the two different types of containers.

3. Kennedy fails to teach or suggest housing sections that can accommodate varying sizes of containers for the active substances in any one embodiment.

In the OA, on p. 2, the examiner stated:

Kennedy shows that it is known in the art to provide a volatile carrying support or case with housing sections that can accommodate varying sizes of the active substances (see Figures 1, 6 and 7).

Applicants respectfully disagree with this characterization, because the housing sections that can accommodate different sizes of active substances are all disclosed as separate embodiments, and there is no embodiment shown in which the housings can accommodate two different types of containers. In the embodiment shown in Figure 1, the housing (cartridge 15) can hold multiple wedge-shaped blocks 32, but these blocks (containers) are all the same size and shape, and are not distinguishable in any manner such that one could be deemed a "tablet" and another a "tray". See Kennedy at 4/9-38.

Figure 6 shows a separate embodiment. Kennedy states, at 6/8-11:

Fig. 6 shows an *alternative* cartridge in which the holder 40 is formed without radial divisions and receives an annular block 41 of air freshening material. [emphasis added]

5 Again, Figure 7 shows another separate embodiment. Kennedy states, at 5/13-15:

10 In Fig. 7 there is shown a *further form* of cartridge in which holder 45 has a spoked arrangement in which four spokes 46 extend radially from the hub portion 27. [emphasis added]

While Kennedy does show multiple housings that support two different sizes and shapes of containers, it does not provide such a teaching in a single embodiment.

A disclosure of separate supports comprising separate housings does not
15 teach or suggest the single support of the present invention that comprises two housings adapted in size and shape to two different types of containers of active substances, where the containers are a tablet and tray, nor is such a configuration obvious when looking to the teaching of Kennedy. In Kennedy, there are three separate sizes and shapes of containers disclosed: 1) the wedge shaped variant
20 shown in Figure 1, 2) the annular block variant shown in Figure 6, and 3) the slotted disk shown in Figure 7. In each case, there is a single holder designed to accommodate only one of the containers (the "holder" in Figure 1 being the wedge-shaped holder). There is no suggestion that any two of the separately sized and shaped containers could be located within two housings of a support as required by
25 the claims, nor would it make sense in Kennedy to provide separate holders adapted

in size and shape to two different types of containers since each holder is specifically designed to accommodate only the container according to the specific embodiment described.

In the Response to Arguments section on pp. 4-5 of the OA, the Examiner stated that there is no claim recitation of varying the size and shape of the pockets, but of the different types of containers of the active substance. The Examiner then reiterated that Kennedy clearly shows that its container support has housings or sections that allow accommodating various sizes and shapes of fragrant materials/containers.

The language of claim 7 requires that a support comprises two housings. The only embodiment of Kennedy that could possibly read on a support comprising two housings is the embodiment shown in Figure 1, in which four wedge shaped "housings" are contained within the holder 26 "support". However, the wedge-shaped "housings" are not adapted in size and shape to two different types of containers, the types being a tablet and tray with semi permeable membrane.

In summary, although Kennedy shows the possibility of using different types of active substance containers, and respective housings to accommodate these containers, these are all disclosed as separate embodiments, and in no case is a slidable support disclosed comprising two housings that are respectively adapted in size and shape to two different types of containers of the active substances.

As indicated in MPEP 2143.01(III), the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness. However, in this

case, even when O'Rourke, Flashinski, and Kennedy are combined, there is still a lack of teaching for the elements of independent claim 7.

MPEP 2143.03 indicates that in order to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In the present case, none of the references, alone or combined, teaches the support comprising two housings adapted in size and shape to two different types of containers of active substances.

Therefore, Applicants assert that amended claim 7 is new and inventive over the prior art, and respectfully request that the Examiner withdraw this §103(a) rejection from the present application.

Although Applicants assert that the present claim language of claim 7 is sufficient to distinguish the invention from the references cited by the Examiner, Applicants have added claims 13-17 which focus on terminology issues raised by the Examiner in the OA and during the telephone interview conducted with the Applicants' representative, and respectfully request that the Examiner consider the language of the newly added claims in the next Office Action.

4. Claims 8, 10 and 12 can be distinguished from O'Rourke, in view of Flashinski and Kennedy based on their dependence from independent claim 7 and as argued above.

Applicants respectfully assert that the combination of references do not teach or suggest the present invention. As previously discussed, O'Rourke, in view of Flashinski and Kennedy, fails to show the device claimed in claim 7, which forms the

basis for claims 8, 10 and 12. As the combination of references fails to suggest the evaporator device claimed in claim 7, they also fail to suggest the indirect claims adding different features to the evaporator device of claim 7.

5 5. *O'Rourke does not teach or suggest a U-shaped body, as required by claim 8 of the present application.*

In the OA, on p. 2 of the OA, the Examiner indicated that O'Rourke discloses that the base body has a U shape with a rear and a front portion which further has aeration grills with the support fit between the rear and front portions.

10 Applicants respectfully assert that O'Rourke does not disclose a U-shaped body (18), but rather a pass-through path (18) (6/32-33). If the pass-through path 18 of O'Rourke was a U-shaped body, it would not allow a tray to "pass-through" it, but would rather stop when it made contact with the base of the "U". Therefore, the design of O'Rourke is cannot read on the U-shaped body element of claim 8.

15 For these reasons, the Applicants respectfully assert that the amended claim language and the above arguments clearly distinguish over the prior art, and respectfully requests that the Examiner withdraw this §103(a) rejection from the present application.

20 **35 U.S.C. §103(a), CLAIM 9 OBVIOUSNESS OVER O'ROURKE IN VIEW OF FLASHINSKI AND KENNEDY AS APPLIED TO CLAIMS 7, 8 10 AND 12, AND FURTHER IN VIEW OF SCHROEDER AND SHIBAHASHI.**

6. *Claims 8, 10 and 12 can be distinguished from O'Rourke, in view of Flashinski and Kennedy and in further view of Schroeder and Shibahashi.*

In the OA, on pp. 3-4, the Examiner indicates that claim 9 is obvious over the combination of O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12 above, and further in view of Schroeder and Shibahashi in that O'Rourke, in view of Flashinski and Kennedy, is through to show the device claimed
5 except the thermochrome paint on the body. The Examiner indicates that Schroeder shows a fluorescent screen provided on the body of the evaporator device to indicate the function of the device and Shibahashi shows that it is well known in the art that thermochromic materials provide fluorescent colors which can be used to indicate operating temperature.

10 Applicants respectfully assert that the combination of references do not teach or suggest the present invention. As previously discussed, O'Rourke, in view of Flashinski and Kennedy, fails to show the device claimed in claim 7, which forms the basis for claim 11. Thus, while Schroeder and Shibahashi may disclose the use of thermochromic materials to indicate operating temperature of the device upon which
15 the thermochrome paint is located, they do not suggest a support comprising two housings respectively adapted in size and shape to two different types of containers of active substances, the containers being a tablet and tray with semi permeable membrane.

For these reasons, the Applicants respectfully assert that the amended claim
20 language and the above arguments clearly distinguish over the prior art, and respectfully requests that the Examiner withdraw the §103(a) rejection from the present application.

35 U.S.C. §103(a), CLAIM 11 OBVIOUSNESS OVER O'ROURKE IN VIEW OF FLASHINSKI AND KENNEDY AS APPLIED TO CLAIMS 7, 8 10 AND 12, AND FURTHER IN VIEW OF SPRICK OR FUCHS.

7. Claim 11 can be distinguished from O'Rourke, in view of Flashinski and

5 *Kennedy and in further view of Sprick or Fuchs.*

In the OA, on p. 4, the Examiner indicates that claim 11 is obvious over the combination of O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12 above, and further in view of Sprick or Fuchs in that it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by

10 Flashinski and Kennedy, with the safety mechanism disclosed in either Sprick or Fuchs.

Spricks and Fuchs disclose child resistant containers, where there is a threaded closure and a means of locking one piece of the container to another. In both patents, the means of locking one piece to another can be overcome by

15 deflecting or flexing a container wall to disengage the locking mechanism, allowing the parts of the container to be unscrewed using the threaded closure.

Applicants respectfully assert that the combination of references do not teach or suggest the present invention. As previously discussed, O'Rourke, in view of Flashinski and Kennedy, fails to show the device claimed in claim 7, which forms the

20 basis for claim 11. Thus, while Sprick and Fuchs may disclose safety mechanisms that can be released upon distortion of the device, they do not suggest a support comprising two housings respectively adapted in size and shape to two different

types of containers of active substances, the containers being a tablet and tray with semi permeable membrane.

For these reasons, the Applicants respectfully assert that the amended claim language and the above arguments clearly distinguish over the prior art, and

5 respectfully requests that the Examiner withdraw this §103(a) rejection from the present application.

CONCLUSION

Inasmuch as each of the rejections have been overcome by the amendments and arguments presented, and all of the examiner's suggestions and requirements
10 have been satisfied, it is respectfully requested that the present application be reconsidered, the rejections be withdrawn and that this application be passed to issue.

Respectfully submitted,

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